



THE ATTORNEY GENERAL OF TEXAS

AUSTIN 11, TEXAS

WILL WILSON
ATTORNEY GENERAL

February 10, 1958

Hon. William A. Harrison
Commissioner of Insurance
International Life Building
Austin, Texas

Opinion No. WW-363

Re: Whether a company subject to the provisions of Subchapter A of Chapter 5 of the Insurance Code regulating rates for motor vehicle or automobile insurance may declare dividends to one class of insureds upon a different percentage basis from another class of insureds under the provisions of Article 5.08 and Article 5.09 of the Insurance Code.

Dear Sir:

You have asked our opinion as follows:

"Articles 5.08 and 5.09 prohibit discrimination or distinctions being made in the payment of dividends to policyholders. Article 5.08 specifically says that 'no insurer shall discriminate in any distributions of profits between insured of a class, and no classes for distribution shall be made or established except on the approval of the Board'. We respectfully request your opinion as to whether a company subject to the provisions of Articles 5.08 and 5.09 may declare dividends to one class of insureds upon a different percentage basis from another class of insureds, with the only significant difference between the two classes being that one class has paid premiums based upon a time period of six months and the other has paid premiums based upon a time period of twelve months or longer?" (Emphasis added.)

The effect of the language that you have quoted from Article 5.08 of the Insurance Code as set out above is to vest the Insurance Department with authority to approve or disapprove the creation of any classes for distribution. It is the intent of the Legislature in enacting Articles 5.08 and 5.09 of the Insurance Code to prevent discrimination in the payment of dividends to policyholders. In exercising the authority vested in it, the Board has full authority to determine whether or not the proposed classes for distribution are justifiable. Therefore, it is for the Board to determine whether or not there is a significant

Hon. William A. Harrison, page 2 (WW-363)


difference between the two classes as outlined in your letter so as to warrant approving them as separate classes for the payment of dividends.

SUMMARY

It is within the authority of the State Board of Insurance to determine whether proposed classes of insureds for dividend purposes are justifiable under Article 5.08 of the Insurance Code.

Yours very truly,

WILL WILSON
Attorney General of Texas

By 
Fred B. Werkenthin
Assistant

FBW:lm

APPROVED:

OPINION COMMITTEE:

Geo. P. Blackburn, Chairman

John H. Minton, Jr.
B. H. Timmins, Jr.
Marietta McGregor Payne

REVIEWED FOR THE ATTORNEY GENERAL
BY:

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